IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5880 OF 2006

Hamida Maqbul Sayyad .. Petitioner

V/s

Jubeda Ismail Sayyad & Ors. .. Respondents

Mr.S.S. Pandit i/b Mr.P.M. Shah for the Petitioner.

Mr.P.K. Hushing for Respondents No.4 to 7 and 9.

Mr.S.M. Oak for Respondents No.1 to 3.

WITH

WRIT PETITION NO. 5886 OF 2006

Sayyad Noor Babumiya Sayyad & Ors. .. Petitioners.

V/s

Jubeda Ismail Sayyad & Ors. .. Respondents

Mr.P.K. Hushing for the Petitioners.

Mr.S.S. Pandit i/b Mr.P.M. Shah for Respondent No.5.

Mr.S.M. Oak for Respondent No.1.

CORAM : H.L. GOKHALE, J.

DATE : 9/1/2007

P.C. :

1. Writ Petition No.5880 of 2006 is filed by one Hamida, daughter of Babumiya Sayyad now deceased. It is

her case that when a suit was filed by her three sisters, viz. Zubeda, Abida and Shama, for apportionment of their share in the property of this Babumiya, she was not joined as a party Defendant. Now, what has happened is that she came to know about the decree after its having been passed. This Hamida is staying at Daund whereas all these three sisters are at Hadapsar. After the decree, this Hamida has filed an application praying that she may be joined in the Darkhast proceeding and she may be permitted to lead evidence. That application has in fact been allowed by the Darkhast Court by its order dated 14th March 2006.

2. Mr.Pandit for the Petitioner states that the decree itself should be set aside. That was not the application before the Darkhast Court. He states that he will move the necessary application before the Trial Court. As and when such an application is made, that Court will decide the same in accordance with law after giving notice to all parties. Writ Petition No.5880 of 2006 is disposed of accordingly.

3. As far as Writ Petition No.5886 of 2006 is concerned, it is filed by four brothers and the mother of Hamida. They are accepting that there was an error in not joining Hamida in the original proceedings wherein they were Defendants. They have therefore filed

an application (Exhibit-9) on 13th April 2005 to the Trial Court that although a preliminary decree is passed, a final decree should not be passed. No order has been passed on that application and therefore Mr.Hushing has filed this petition on behalf of the four brothers and the mother. The prayer in the petition is however that the decree be set aside. Now, as far as this prayer is concerned, the proper forum for these brothers and the mother will be the Trial Court by way of an application. In the meanwhile, however, prayer (a) of the application (Exhibit-9) that final decree should not be passed, requires to be considered.

4. Mr.Oak for the three sisters, who have filed the suit, opposes the prayers in both these petitions. However, considering the facts of the present case, in my view, this limited prayer that the final decree should not be passed requires to be entertained. Accordingly, this petition also stands disposed of.

5. The four brothers and the mother as well as Hamida will be at liberty to make their applications before the Trial Court. As and when those applications are made, the Trial Court will decide the same on merits. The Trial Court will not proceed with the execution of the decree in the meanwhile.

(H.L. GOKHALE, J.)